

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Case No. 01-01139 (JKF)
W. R. GRACE & CO., et al., Chapter 11
Debtors. Jointly Administered
June 18, 2002
2:40 p.m.
(Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE COURT: Okay. This is the matter of W.R.
2 Grace, 01-1139.

3 MR. KAPP: Good afternoon, Your Honor. James Kapp
4 on behalf of the debtors. Your Honor, items (1) and (2) on
5 our agenda are continued. Item (3) was uncontested.

6 THE COURT: Whoa - whoa.

7 MR. KAPP: I'm ready to rule, Your Honor.

8 THE COURT: I'm not even on --

9 MR. KAPP: I'm excited. I'm ready to go. Having
10 fun.

11 THE COURT: All right. Items (1) and (2) are
12 continued till July 22nd.

13 MR. KAPP: Item No. (3), Your Honor, is --

14 THE COURT: I have signed that order.

15 MR. KAPP: Excellent. If you would allow us, Your
16 Honor, I would like to go out of order to Item No. (5) as we
17 have reached a resolution with regards to the United States
18 Trustee's objection to the debtors' motion to retain PWC.

19 THE COURT: All right.

20 MR. KAPP: In particular, the order has now been
21 modified with two regards. PWC will be retained as of April
22 15th, the date of the admitted application, and particularly
23 the order now also specifies, and I'd like to read on the
24 record, Your Honor, that this order shall not constitute
25 approval of any finding or evidence regarding: (1) any

1 request for approval on any theory of the employment of PWC
2 by any of the debtors prior to April 15th, 2002; and (2) the
3 disinterestedness of PWC at any time prior to April 15th,
4 2002; and (3) PWC's entitlement to any compensation for
5 services prior to April 15th; and finally, any other fact
6 that may be subsequently offered by the debtors or PWC in
7 support of any request to retain or compensate PWC for any
8 services rendered prior to April 15th, 2002. And all parties
9 reserve all their rights to object with regards to all such
10 matters. And with that said, Your Honor, if there's no
11 objection, I would offer a revised order.

12 THE COURT: Just a minute, please.

13 MR. KAPP: Your Honor, if it would help, I have a
14 redline of the changes, if that would help.

15 THE COURT: PWC's affidavit indicates that it's
16 waiving its right to claim an indemnity as to its
17 Casson/Bruce (phonetical) litigation, but I'm not clear
18 whether -- what it's saying is that they're waiving the right
19 as of April 15th or whether they just filed the affidavit on
20 April 15th, and they're waiving any claims to that indemnity.
21 The brief seems to indicate it's the latter. The affidavit,
22 I think, isn't clear. Which is it?

23 MR. KAPP: Your Honor, PWC is here, but I believe
24 you are correct it is the latter. They are waiving the
25 conflict altogether.

1 THE COURT: Waiving the indemnity claim.

2 MR. KAPP: Yes.

3 THE COURT: Well, if they're waiving the indemnity
4 claim altogether, is there some other pre-petition claim that
5 it has?

6 MR. KAPP: Your Honor, PWC performed -- We are
7 retaining -- The debtors are retaining PWC now as auditors
8 and tax consultants. PWC did do other work for the debtors
9 prior to that period. That amount is still out there, and in
10 the past -- in the original application, they sought to be
11 retained as of the petition date, but the now this agreement
12 will reserve their right to come back if they so choose to
13 try to argue for that amount. I would ask PWC's counsel to
14 speak up as to the actual dollar amount outstanding.

15 THE COURT: But they still have a claim for pre-
16 petition services?

17 MR. KAPP: I believe -- Actually, no, it's with
18 regards to post-petition services. They don't have any pre-
19 petition claim, but PWC has been doing work for the debtors
20 since the petition date, April 2nd of 2001, and pertains to
21 fees incurred by PWC after April 15th, 2002, but we have the
22 period from the petition date to April 15th, 2002, this order
23 would just be a standstill and preserve the rights of all
24 parties with regard to that, that post-petition period.

25 THE COURT: All right. Can I just get a time line

1 answer to my question so I make sure I'm on the same page.
2 The only claims PWC had pre-petition was this indemnity claim
3 for the Casson-Bruce litigation. There was no unpaid pre-
4 petition amount owed to PWC.

5 MR. KAPP: Yes, Your Honor.

6 THE COURT: Post-petition they performed work
7 before the order was entered authorizing their appointment,
8 and they haven't been paid for those post-petition services.

9 MR. KAPP: Yes, Your Honor.

10 THE COURT: And now everybody's agreeing that as of
11 April 15th, 2002, they can be retained and they can be paid
12 for services from that date forward.

13 MR. KAPP: Yes.

14 THE COURT: But it's the only petition -- The only
15 potential conflict they had for services before April 15th,
16 2002, was the fact that this indemnity was out there, and
17 they've now waived that claim. Why aren't they entitled to
18 be paid for the rest of the post-petition services and be
19 appointed nunc pro tunc?

20 MR. KAPP: Well, Your Honor, we would agree with
21 you, but I have a feeling the U.S. Trustee has a few
22 comments.

23 THE COURT: Well, I'd like to hear them because I'm
24 not sure I understand since the case law seems to say that if
25 there is no conflict then you're entitled to be retained, why

1 I have to address this issue later rather than now? Mr.
2 Perch?

3 MR. PERCH: Good afternoon, Your Honor, Frank Perch
4 for the United States Trustee. Your Honor, the United States
5 Trustee's continuing objection to the approval of PWC's
6 retention for a time period prior to April 15th of 2002 is
7 based upon the standard set forth in the Third Circuit case
8 law on nunc pro tunc retention such as the F.S. Air Lease
9 case which sets forth a two-part test for approving nunc pro
10 tunc retention, and the two prongs are first, that the
11 applicant must have been disinterested and thus capable of
12 being retained as of the proposed earlier nunc pro tunc date,
13 and secondly, the applicant must show extraordinary
14 circumstances justifying the delay. We believe, Your Honor,
15 that there are problems on both prongs of this test but most
16 germane to Your Honor's concerns being expressed right now is
17 that the affidavit of Mr. Farmer attached to the amended
18 retention application recites that, quote, "As of the date
19 hereof," close quote, the indemnity claim has been waived.
20 And the date of Mr. Farmer's affidavit is April 15, 2002.
21 The "as of the date hereof" language indicates that there was
22 no waiver of the indemnity claim prior --

23 THE COURT: But that's been verified on the record
24 now.

25 MR. PERCH: -- to April 15th, 2002.

1 THE COURT: That's been clarified simply to say
2 that the affidavit is dated that date, but they're waiving
3 the claim entirely. That's what I just asked on this record,
4 because that's what their brief says.

5 MR. PERCH: But they're waving it as of April 15th.
6 They're not waiving it as --

7 THE COURT: No. No, they're waiving it backwards.
8 They filed the affidavit on April 15th.

9 MR. PERCH: Well, I didn't understand that to be
10 the nature of the clarification, Your Honor.

11 THE COURT: Well, let me ask counsel for PWC so we
12 get it on the record because that's what I understood the
13 application to say. So, let me clarify, Mr. Perch. Good
14 afternoon.

15 MR. GOODCHILD: Good afternoon, Your Honor, John
16 Goodchild with the law firm of Morgan, Lewis, and Bacchus
17 (phonetical) on behalf of PricewaterhouseCoopers. Your
18 Honor, counsel for the debtors is correct. Although the date
19 on which the waiver was made was April 15th, the waiver is of
20 any claim at any time arising under that indemnity.

21 THE COURT: Can I get that specified in writing in
22 a supplemental affidavit so that I can put this issue to bed?

23 MR. GOODCHILD: Yes, Your Honor.

24 THE COURT: Thank you. How much time will that
25 take?

1 MR. GOODCHILD: We could have it within a day or
2 two, Your Honor.

3 THE COURT: Fine. Thank you. Within a week. I'd
4 like that supplemental affidavit to simply explain that the
5 waiver is for all claims under it, but the affidavit was
6 dated as of that date.

7 MR. GOODCHILD: Is there any other issue you'd like
8 me to address, Your Honor?

9 THE COURT: Well, I want to hear from Mr. Perch. I
10 don't know. If you give me a minute, I'll let you know. Mr.
11 Perch?

12 MR. PERCH: I'm having a little bit of difficulty
13 understanding how it is that the indemnity agreement can be
14 waived retroactively.

15 THE COURT: Because there hasn't been a claim made.
16 So if there hasn't been a claim made, and they waive any
17 rights to be paid under that indemnity it can be waived
18 retroactively because they'll never be able to file a claim.
19 Am I correct? There's been no claim made?

20 MR. GOODCHILD: Your Honor, there was never any
21 claim made.

22 THE COURT: So they're waiving it retroactively.

23 MR. PERCH: I think, Your Honor, we still need to
24 address the second prong of the nunc pro tunc retention
25 standard which is: What are the extraordinary circumstances

1 supporting the delay in making PWC disinterested? It is my
2 understanding that this issue was in -- that this indemnity
3 agreement was in existence prior to the filing of W. R.
4 Grace's petition on April 2 of last year, 2001, and that the
5 issue, therefore, was obvious from the date the petition was
6 filed. PWC has been rendering services since the date the
7 petition was filed. Initially, in fact, I think it's fair to
8 say that no efforts were made or at least no efforts were
9 successfully made, I should say, to deal with the problem
10 until April 15th. Instead what happened was PWC filed a --
11 really, I'm sorry I have to say frivolous application to get
12 paid notwithstanding the conflict, and I strongly suspect
13 although it was ultimately continued a few times and
14 withdrawn consuming a lot of attorney time and, therefore,
15 the estate's money in dealing with this situation over these
16 -- period of really basically a year, a year and two weeks,
17 to put themselves into a position where they could be
18 retained. And I don't think there's been any showing of a
19 set of factual circumstances meeting the requirements of
20 Third Circuit law explaining the delay of a year and two
21 weeks.

22 THE COURT: Well, I think the application was filed
23 perhaps in a different format but asking to retain
24 Pricewaterhouse shortly after the case was filed. And then,
25 as I recall, it was withdrawn because the U.S. Trustee and

1 frankly the Court had some concerns about the nature of --
2 not the nature of the retention but the method of the
3 retention, and this application was substituted for it, if I
4 recall correctly. Now, if that's the case, we're talking, I
5 think, about a two-month delay. I don't think at the outset
6 of the case that that's extraordinary.

7 MR. PERCH: Your Honor, the time frame was that the
8 original application was filed, the non-professional
9 application or whatever it is one might want to call it, was
10 filed on January 10th of 2002 --

11 THE COURT: Right.

12 MR. PERCH: -- not when the case was filed.

13 THE COURT: Oh, in 2002.

14 MR. PERCH: The case was filed, Your Honor, April 1
15 of -- April 2, pardon me, of 2001. First application of any
16 kind to approve compensation or retention of PWC was on
17 January 10 of 2002.

18 THE COURT: The case was filed when?

19 MR. PERCH: April 2 of 2001, Your Honor.

20 THE COURT: Okay.

21 MR. PERCH: So that even if you want to go back to
22 that first date, we've still got to explain getting from
23 April of 2001 to January of 2002.

24 THE COURT: Yeah, now, that I agree with. But I
25 think that the retention can go back to January when the

1 initial application was filed because I think this waiver,
2 that clarifies it is a waiver of any claim under that
3 indemnity, satisfies the fact that Pricewaterhouse now was
4 eligible at that time to be retained because the waiver is in
5 place.

6 MR. PERCH: Your Honor, with all respect, I
7 disagree with that because allowing the April 15th
8 application to relate back to January 10 really authorizes
9 and endorses an effort for the movant to manipulate the
10 process and have it both ways because the application filed
11 on January 10 took the position that PWC -- well, took a
12 number of somewhat inconsistent positions, but it basically
13 took the position that PWC was not a professional and,
14 therefore, could be compensated notwithstanding the fact that
15 it had a conflict, alternatively took the position that PWC
16 was an ordinary course professional. Then when objections
17 were filed to that, they dropped back and filed an
18 application, really a garden variety application, under
19 327(a) and 328 seeking to be retained as professionals when
20 an objection was filed to the nunc pro tunc aspect of that
21 going back to a time prior to the date that they said they
22 made themselves disinterested, then a reply brief was filed
23 reviving the argument that they were nonprofessionals --

24 THE COURT: Well, let me put that argument --

25 MR. PERCH: -- and all goes back and forth.

1 THE COURT: Let me put that argument to bed. There
2 is no way under the circumstance of this case that this Court
3 is going to say that they were anything other than
4 professionals. No way. And one reason I want to go back to
5 the January date is because I want to make a ruling that says
6 that application attempting to say that Pricewaterhouse was
7 retained as something other than a professional subject to
8 327 through 330 of this code is absolutely not supported by
9 anything of record. I'm not even sure how it could ever be
10 supported of anything of record, and I want to put that issue
11 to bed. That's one reason I would like to go back to that
12 date. I want it clear that they were asking in a
13 professional capacity on this record, and that there is no
14 claim for services under any other theory except 327 through
15 330. That's what I intend to do in this order.

16 MR. PERCH: Thank you, Your Honor. Your Honor, I
17 won't disagree on that score at all.

18 THE COURT: I don't think I need anything from you
19 except a supplemental affidavit unless you want to tell me
20 how your law firm that's been a professional in virtually
21 ever case I've been associated with that has your firm in it
22 is a professional, and why you would want a ruling that's
23 going to be published in the Wall Street Journal or whatever
24 that says the Court determines Pricewaterhouse provides non-
25 professional services.

1 MR. GOODCHILD: Your Honor, I think it's fair to
2 say that supplemental affidavit exists.

3 THE COURT: Okay. I'm going to make this order
4 retroactive to January 10th when it was filed. If there's
5 some basis for going back beyond that, that issue can be
6 preserved. What was the date of filing? January what?

7 MR. KAPP: January 10th, Your Honor.

8 THE COURT: January 10?

9 MR. KAPP: Ten, 2002.

10 THE COURT: All right. I have modified this
11 proposed order to state that for the reasons I've expressed
12 on the record, that I am authorizing Pricewaterhouse's
13 retention nunc pro tunc to January 10, 2002, that it has
14 waived any claims to an indemnity re the Casson/Bruce
15 litigation and all other pre-petition claims. I understand
16 there aren't any but I want to make it clear. That the
17 requirements to employ Pricewaterhouse as the disinterested
18 professional is met, and Pricewaterhouse is retained as a
19 professional under 327 through 330 and not under Section 363
20 as an ordinary course employee. That the issue of the nunc
21 pro tunc beyond January 10, '02 and fees for services in that
22 time as a professional, those issues are preserved. And that
23 the debtor has set forth sufficient reasons why nunc pro tunc
24 authorization as of January 10 is appropriate. I think I
25 corrected all of the November '01 dates to say January 10,

1 '02. If I didn't, when you get this order please let me know
2 and I'll revise it, but I want it clear that they're being
3 retained nunc pro tunc to January 10 for now.

4 MR. KAPP: Thank you, Your Honor.

5 THE COURT: All right. That order's entered.

6 MR. KAPP: And, Your Honor, before we go back down
7 to (4), if this Court would be so kind to excuse Mr.
8 Goodchild.

9 THE COURT: Yes, sir, thank you.

10 MR. GOODCHILD: Thank you, Your Honor.

11 MR. KAPP: Your Honor, Item No. (4), final item on
12 today's agenda, is Kellogg's motion to reconsider this
13 Court's denial of their motion for relief from the automatic
14 stay.

15 THE COURT: All right.

16 MR. KAPP: Mr. Scanlon.

17 MR. SCANLON: Good afternoon, Your Honor, Patrick
18 Scanlon --

19 THE COURT: Good afternoon.

20 MR. SCANLON: -- for Edythe Kellogg. Your Honor,
21 Ms. Kellogg asks the Court to reconsider the prior denial of
22 the motion for relief from stay based on her agreement to
23 waive the first \$250,000 of any award under this. This was
24 an automobile accident. The retention agreement with W. R.
25 Grace provides that they will reimburse the insurance carrier

1 for the first \$250,000. Grace should not object to this
2 waiver because of their benefitting by \$250,000 that has to
3 be paid either as a secured or unsecured claim. The
4 insurance company will be providing a defense for this
5 action. Because this is an automobile negligence
6 intersection accident which a truck driven by -- a truck
7 belonging to W. R. Grace was involved in the accident. There
8 are no complicated issues that would require the attention of
9 senior management in W. R. Grace. At most, there's an issue
10 of what the driver of the truck was doing at the time for
11 scope of employment issue. The insurance company has no
12 reason to complain. They don't have to pay the two hundred
13 and fifty thousand and then take the risk that they can
14 collect from the two lines of credits totalling just under \$3
15 million.

16 THE COURT: Well debtor tells me that their policy
17 of insurance provides that they have to pay that claim
18 regardless of whether your client waives it or not. That
19 before the insurance company has to pay a dime, the debtor
20 has to pay \$250,000.

21 MR. SCANLON: Your Honor, there's nothing that I've
22 seen in the insurance policy that addresses that. The
23 insurance policy doesn't contemplate the filing of
24 bankruptcy. It merely states, as I understand it, that the
25 obligation of W. R. Grace is to repay the insurance company,

1 reimburse the insurance company for the first \$250,000
2 awarded in it. If the defendant is waiving that, the
3 insurance company can hardly collect on something that they
4 haven't paid.

5 THE COURT: They will have paid it though. It's
6 just that -- You know, let's say your client gets an award of
7 a million dollars, and she agrees not to take the
8 distribution of \$250,000, then I'm involved in litigation
9 between the debtor and the insurance company as to whether
10 it's the first two fifty or the last two fifty out of that
11 million that's being waived. So debtor can say that it's
12 first, but that doesn't change the insurance policy between
13 the debtor and the insurer. So, all I've done --

14 MR. SCANLON: Your Honor --

15 THE COURT: -- is essentially convert your client's
16 unsecured claim over to the insurance company's unsecured
17 claims. Only they may actually be secured because they've
18 got letters of credit it. So, I've created a double problem
19 for the debtor.

20 MR. SCANLON: You haven't, Your Honor. Money is
21 completely fungible. There's no first two hundred and fifty
22 thousand or last two hundred and fifty thousand out of a
23 million dollar award. The award is a million dollars in your
24 example. The insurance company doesn't pay the million
25 dollars but only seven hundred and fifty because of this

1 order requiring that Edythe Kellogg waive the first two
2 hundred and fifty thousand. They can hardly come back to
3 collect the two hundred and fifty thousand when they haven't
4 paid that money. This is a false issue. Besides, the
5 insurance company is not going to come back at all. If
6 they're going to go to anyone, they're going to go to the
7 bank, the line of credit. It will be the bank that's
8 defending that issue. The larger of these two lines of
9 credits for Bank of America for \$2.19 million is not secured
10 by anything. The other one if it happens to be that the
11 insurance company proceeds against the line of credit that is
12 secured by assets of the estate, they're going to certainly
13 have a hard time coming against W. R. Grace to collect
14 something that they haven't paid. It's just totally
15 unjustified. The insurance company is getting a free ride on
16 this because they don't have to take the risk that they can't
17 collect on the lines of credit. The full line of credit will
18 be there undiminished by this two hundred and fifty thousand
19 to secure them for the payment of other claims that they
20 might have to pay. And the bank who has the line of credit
21 will also benefit and be in no position to complain in this
22 because if it's the Bank of America, they won't have to repay
23 the insurance company. They won't wind up with an unsecured
24 claim for two hundred and fifty thousand. If it's the claim
25 that's secured by the assets of the debtor, then that

1 \$730,000 line of credit will remain available for other
2 claims that are against it. So, the insurance company is not
3 hurt. The bank is not hurt. The debtor is not hurt. The
4 debtor is not inconvenienced except in the most negligible of
5 sense by allowing this claim to be presented. And the
6 advantages to the debtor, all of the other parties involved,
7 far outdistance any minor inconvenience that they might have
8 to answer a few interrogatories about scope of employment.

9 THE COURT: Well, I still think your client's
10 remedy is to file a claim here. I mean, she filed this claim
11 in the state court in violation of the automatic stay in the
12 first place, and if I were to approve this order, that would
13 potentially alert creditors to the fact that it's okay to
14 file things in violation of the stay and not face the
15 consequences which are that that action's void, and I don't
16 think that's a good policy to set, Mr. Scanlon. I think the
17 policy is you shouldn't be filing actions in violation of the
18 stay particularly when there is a proof of claim process
19 available or you should get relief from stay to be able to
20 file that action. This was filed, if I recall, about a year
21 after the accident. Correct? So it was a statute of
22 limitation's issue that would excuse not getting a relief
23 from stay at the outset.

24 MR. SCANLON: Your Honor, these are personal injury
25 attorneys.

1 THE COURT: Yes.

2 MR. SCANLON: They didn't receive a notice of the
3 filing of bankruptcy.

4 THE COURT: It's difficult with a company the size
5 of Grace and the announcement in virtually every paper in the
6 country that this case has filed bankruptcy along with its
7 ga-zillion related companies, I don't even know the number of
8 them, Mr. Scanlon, to think that somebody wasn't aware of it.
9 And even if they were, I'm not saying that it's subject to
10 some sanctions for having filed it, but it seems to me that
11 it sets the wrong policy for permitting an action to go
12 forward that's filed in violation of the statute.

13 MR. SCANLON: Your Honor, we have no problem with
14 dismissing the action and filing it again if we get the
15 relief. The point is that this eighty-two --

16 THE COURT: Well, the . . . is to validate the
17 action.

18 MR. SCANLON: No, Your Honor. The relief is not to
19 say that you can ignore the stay, and as soon as they found
20 out that this bankruptcy existed, they hired me to come in
21 and file this application for relief to proceed.

22 THE COURT: Right.

23 MR. SCANLON: And we have not disobeyed the Court
24 once we knew the Court was involved in the proceeding nor
25 would we do so in the future. But we have a situation here

1 where it seems that for a gnat's breath of inconvenience to
2 the debtor, the sixty-year-old -- eighty-two year old woman
3 is going to be denied any relief at all, her accident, during
4 her probable lifetime.

5 THE COURT: Why? If she simply files a -- If she
6 files a proof of claim, then if somebody has an objection to
7 it, they'll raise it. If they don't have an objection to it,
8 she'll get paid. So, I'm not sure. I mean, at some point
9 the claim has to be liquidated, but I'm not sure why it has
10 to be liquidated now. The asbestos victims and other court
11 victims that the debtor has to deal with are in the same
12 positions as your client. I don't see what separates her
13 out, and I'm not trying to minimize the fact that she's
14 elderly and would like to see this done, Mr. Scanlon, but the
15 reality is that the debtor has filed bankruptcy in part to
16 eliminate all the litigation going against it so that it can
17 get all of its creditors dealt with an appropriate forum and
18 I don't know that piecemealing litigation back to the state
19 courts is a good idea.

20 MR. SCANLON: Your Honor, the plaintiff filed a
21 proof of claim on January 30th, '02.

22 THE COURT: All right.

23 MR. SCANLON: For \$250,000.

24 THE COURT: All right.

25 MR. SCANLON: Nothing has been paid, nothing is

1 proposed, and nothing is anywhere close to being paid on
2 that.

3 THE COURT: Well --

4 MR. SCANLON: And no objection has been filed.

5 THE COURT: Okay. Then I guess the question for
6 the debtor is when are you going to do something about this
7 proof of claim. You don't want to go back to state court.
8 It's got to be liquidated. When are you going to do
9 something about it.

10 MR. KAPP: Well, Your Honor, I guess I would look
11 -- We don't have a bar date yet set.

12 THE COURT: That doesn't matter. This one's filed.

13 MR. KAPP: Well, we can file an objection, Your
14 Honor.

15 THE COURT: And there is a bar date set, I think,
16 for unsecured creditors any way. It just hasn't passed yet.

17 MR. KAPP: I'm sorry, Your Honor -- We can get an
18 objection on file, Your Honor, address it, otherwise in the
19 next ten days.

20 THE COURT: Okay. If you're going to. I mean I
21 don't know whether the debtor is going to object to it or
22 not, but it seems to me that at this point some discussions
23 should get started. Mr. Scanlon, I don't think it's a good
24 idea to permit this to go forward. However, I'm a little
25 intrigued by your concept that the estate isn't going to be

1 out \$250,000 because you're actually not waiving the claim
2 against the estate, you're waiving the first recovery of
3 proceeds. So, I need to know from the debtor whether that
4 changes this analogy.

5 MR. KAPP: Your Honor, James Kapp, just briefly.
6 Your Honor got it right at the April omnibus hearing. No
7 matter which way we go here, there will be assets of the
8 estate expended if the Kellogg litigation is allowed to
9 continue. We do sympathize with Ms. Kellogg's plight, but
10 the terms of the agreement are the terms of the agreement,
11 and the terms provide that the insurer has a right for the
12 debtors to indemnify them as to the first \$250,000 expended,
13 and we believe, therefore, that Ms. Kellogg's proposal would
14 not work as it sets the bar with the first two -- It's really
15 not the obligation of Ms. Kellogg to waive. It's the
16 obligation of the insurance. They're not here. So we do not
17 believe that that addresses this, and also, Your Honor,
18 either we convert an unsecured claim into a secured claim or
19 in the alternative we're faced with collateral litigation
20 down the road as to what this insurance policy provides and
21 either way we're out assets of the estate. So we would
22 recommend and request that this Court deny the motion for
23 reconsideration.

24 THE COURT: All right. Mr. Scanlon said that in
25 his reading of the insurance policy it doesn't say anything

1 about the debtor having to pay the first two hundred and
2 fifty thousand. That if he waives the first two hundred and
3 fifty thousand, then the insurance company never has to pay
4 it. So you don't have to reimburse it.

5 MR. KAPP: Your Honor, actually we went through
6 this before, actually both the March hearing and the April
7 hearing on this issue. We do believe, as we argued in April,
8 that the provision is not the most clear admittedly but our
9 reading is that we are obligated to pay the first \$250,000.
10 We would note that the insurers have not been here at any of
11 these hearings, and I'm sure they have their own opinion, and
12 as Your Honor noted at the April hearing, and I will quote
13 from the transcript: "In all probability the insurance
14 company will deny coverage until the debtor does not make
15 whatever reimbursement is -- does make whatever reimbursement
16 is necessary and we're right back into collateral litigation
17 any way, which is what I'm trying to avoid." We believe
18 that's what will end up, Your Honor.

19 THE COURT: All right. Anyone else wish to be
20 heard? Okay. I don't think reconsideration is appropriate,
21 Mr. Scanlon. I should say I don't think your -- I should not
22 grant your motion for reconsideration. I have reconsidered
23 the prior order but it seems to me that the litigation that
24 was instituted in violation of the stay really should not be
25 permitted to stand. Movant's remedy is to file a proof of

1 claim here and at this point, based on the debtor's
2 construction of this insurance policy, I think I have to
3 adopt the debtor's view that it -- at best this is going to
4 provide some collateral litigation. Which doesn't make any
5 sense because it's just converting one form of litigation
6 into another. So, that doesn't inure to the benefit of the
7 estate. I will, however require the debtor to examine this
8 proof of claim, and if there is going to be some objection to
9 it, to commence that objection within the next thirty days.

10 MR. SCANLON: Thank you, Your Honor.

11 MR. KAPP: Your Honor, we do have an order here.

12 THE COURT: All right. Thank you. Are you going
13 to need to amend your proof of claim before I require this to
14 go forward, Mr. Scanlon? Or are you only looking to this two
15 fifty at this point?

16 MR. SCANLON: We're looking for two fifty.

17 THE COURT: Two fifty, okay.

18 MR. SCANLON: Two million five hundred thousand.

19 THE COURT: Oh, I'm sorry. I thought it was two
20 hundred and fifty thousand.

21 MR. SCANLON: No, I'm sorry. We have filed a proof
22 of claim for \$2,500,000.

23 THE COURT: I'm going to use the form of order I'm
24 drafting rather than the one that the debtors did. Okay.
25 For the reasons expressed on the record, the motion for

1 reconsideration is denied. Movant has filed a proof of
2 claim. The litigation initiated by movant in state court was
3 commenced in violation of the automatic stay and will not be
4 permitted to proceed at this time. Movant's waiver of the
5 \$250,000 deductible is not sufficient in the circumstances of
6 this case to permit the action to go forward without
7 prejudice to other unsecured creditors in this estate for the
8 reasons stated in debtors' pleadings and briefs and as
9 further expressed on this record, which record is
10 incorporated as part of the Court's findings and conclusions.
11 The debtor shall commence any objection to the proof of claim
12 within thirty days.

13 MR. KAPP: That's fine, Your Honor.

14 THE COURT: Okay.

15 MR. SCANLON: Thank you.

16 THE COURT: Thank you.

17 MR. KAPP: Your Honor, unless there's any
18 housekeeping items, this is the end of the agenda.

19 THE COURT: The only housekeeping matter I think I
20 have is the question of what's happening or what happened
21 with respect to the science trial issue. I think I'm
22 missing some information and maybe it's just that I've been
23 out of town and I haven't had an opportunity to do a docket
24 search. But, I'm not sure whether there was an objection to
25 a claim submitted. I just don't know what the status of that

1 litigation is.

2 MS. BAER: Your Honor, Janet Baer on behalf of the
3 debtors. I can report on the status. Your Honor, on May
4 20th you actually set up a schedule and we submitted a draft
5 order to the Court along with the certification of counsel.
6 That draft order was never signed, and that does set forth
7 the schedule, and we do have copies here if Your Honor would
8 like to take a look at it.

9 THE COURT: I didn't sign it because it got to me
10 after I had left the country, I believe, and then I got stuck
11 out of the country longer than I expected because of the Aer
12 Lingus strike and I got back and went to another conference
13 immediately so that's the problem with it.

14 MS. BAER: Well, Your Honor, the good news is we're
15 complying with your directions in court on May 20th even
16 though the order was not signed. The budgets were filed.
17 Objections to the proofs of claim were filed. The
18 application to employ special counsel has been filed.
19 Pursuant to your ruling on May 20th, the response to the
20 budgets -- each side's responses are due on July 1st. The
21 responses to the objections to the claims -- the objections
22 filed to the claims, the responses are due on July 10th, and
23 the whole matter is set for status hearing before you on July
24 22nd. And again, Your Honor, that is what you had said
25 orally in court on May 20th. It's what we put in the draft

1 order, and it's what we've been doing.

2 THE COURT: Okay. Was there a competing order
3 submitted to me? This is where I think I'm losing --

4 MS. BAER: No, Your Honor.

5 THE COURT: No competing order?

6 MS. BAER: There's a competing order on the Girard
7 matter. On this one there was an order submitted, there was
8 a certification of counsel that indicated that we had not
9 received comments on the order but for Mr. Baena's comments
10 that he wasn't sure we were supposed to be doing this. And
11 Mr. Baena can state in more specific what he had said, but we
12 filed it with the certification indicating that he had
13 reservations about whether this was what we were supposed to
14 be doing, but we were complying with it.

15 THE COURT: Okay. May I have your form of order
16 and also hear from Mr. Baena again. If we can work out this
17 order, I'd like to get one entered. Mr. Baena?

18 MR. BAENA: That's not exactly --

19 THE COURT: Yes, thank you.

20 MR. BAENA: May it please the Court, Scott Baena on
21 behalf of the Property Damage Committee. That's not exactly
22 what we raised with the debtor in regard to the order. The
23 first event that that order required the parties to comply
24 with seemed to us to have been out of sequence. And so --
25 which was the amendment of proofs of claims. The second

1 event being the committee had to come back to the Court and
2 say we'll handle this or we suggest special counsel. So I
3 went to Mr. Bernick, and I suggested that that sequence
4 didn't make sense because if we're going to go with special
5 counsel, they ought to be involved with the amendment to the
6 claims. Debtors' counsel prevailed upon us to believe that
7 they were submitting the order in any event, and so,
8 Zonalight (phonetical) counsel, people who have represented
9 class claimants went ahead and filed certain amended proofs
10 of claims by the deadline that was originally established by
11 the Court. So, we've complied. There is one aspect of what
12 Your Honor discussed in the last hearing, and I apologize, I
13 had to go to Newark that day to meet with Judge Woolin
14 (phonetical), so I only could get a sense of it from the
15 transcript, but you had indicated that you wanted the
16 committee, the Property Damage Committee, and the debtor to
17 meet in person before the debtor filed its response to the
18 papers that were filed by the committee, including the budget
19 and the motion to appoint special counsel. We've endeavored
20 to have such a meeting. We had suggested that we hold that
21 meeting here today before this hearing, but Mr. Bernick was
22 unavailable. I have written to him since to find out
23 alternative dates. I'm not so sure that we're going to be
24 able to manage to have that meeting before July 1. I don't
25 believe that that meeting requirement is part of the order.

1 It was something that you indicated you wanted to see happen
2 at court.

3 THE COURT: I wanted to see it happen because I
4 wanted to make sure that -- I wanted to try to assure that
5 both sides were on the same wavelengths of what the costs of
6 this litigation was going to be and see whether or not there
7 could be some consensus with respect to the budget. That's
8 primarily what I had in mind. Also to see whether the
9 process that's been put in place at that stage seemed to be
10 working or whether you needed some modification. That was
11 what I had in mind.

12 MR. BAENA: Understood. And that's what we would
13 have envisioned using that meeting for. I will say that
14 although I don't think it was required by anything that the
15 Court imposed upon the parties, the debtor did file its own
16 budget for special counsel, what it suggests special counsel
17 for the Zonalight claimants ought to be spending in this
18 case.

19 THE COURT: Oh.

20 MR. BAENA: Not their budget, but our budget.

21 THE COURT: Well, I want their budget.

22 MR. BAENA: I thought you did.

23 THE COURT: Yes. I --

24 MR. BAENA: We have not gotten their budget, we've
25 gotten gratuitously, if you will, their suggestion of what

1 our budget should be.

2 THE COURT: Well --

3 MR. BAENA: And it's very difficult frankly, Judge,
4 to discern from it what they really think the budget ought to
5 be. So, it would be very helpful to that conversation you
6 wish us to have for us to see their budget.

7 THE COURT: I want both budgets filed. That's the
8 whole purpose of --

9 MR. BAENA: We have filed our budget.

10 THE COURT: Yes. I want the debtors' budget. My
11 view of this litigation is, folks, frankly that we're going
12 to set a budget. It's not going to be subject to additional
13 amounts coming in, not for either side, unless there is some
14 catastrophic, astronomical event that is wholly unanticipated
15 right now. That's my view. Once this budget's set, both
16 sides are going to live with it, and I don't expect that it's
17 going to be a significant difference in the amounts of the
18 budget for either side. That's my perception.

19 MS. BAER: Your Honor, with respect to the budget,
20 if I can clarify, we've looked back at the transcript and it
21 was not clear on the transcript what the Court wanted the
22 debtor to provide. A couple days after the hearing there was
23 actually a telephone call to the Pachulski firm and Mr.
24 Carickoff spoke with your clerk.

25 THE COURT: Yes.

1 MS. BAER: Based on that conversation, we
2 understood that the Court had wanted us to provide a budget
3 for special counsel.

4 THE COURT: No, no, no, no. I want your budget. I
5 want a litigation budget. Let me put it this way: I want a
6 litigation budget. I want to know what the costs to this
7 estate of doing this litigation is going to be. So, if, for
8 example, the Trade Committee expects to have a piece of this
9 litigation or to be participating or the Asbestos Plaintiffs
10 Committee does. I want their budget because I am going to
11 set a budget and all people are going to live within it, and
12 it will not be not modified in all probability. So, I want a
13 complete litigation budget.

14 MR. BAENA: Judge, that would be useful information
15 for us to have before we sat down and met with them
16 obviously. I believe that the deadline for meeting with them
17 is --

18 MS. BAER: It's June 30th in the order.

19 MR. BAENA: Right.

20 MS. BAER: Yes.

21 MR. BAENA: It's co-terminus with their reply to
22 our motion.

23 MS. BAER: Right.

24 MR. BAENA: So, counsel has been excellent to deal
25 with, but I don't think an order is necessary but if we could

1 get some indication that we'll have that sufficiently in
2 advance of a meeting.

3 MS. BAER: Your Honor, we had anticipated filing a
4 response to their request to employ special counsel and a
5 response to their budget at the same time on July 1.
6 Obviously now we won't be filing a response to their budge,
7 if I understand it -- oh, no, you want that too.

8 THE COURT: Yea.

9 MS. BAER: All right. So we need to do both, Your
10 Honor.

11 THE COURT: That's why I wanted you to meet because
12 I want -- And I don't think it was clear on the record the
13 last time, that's why I asked my clerk to call and have it
14 built into the order. That's what I thought was going to
15 happen. It would be built into the order that was being
16 submitted that everybody was to submit their own budget. I'm
17 sorry for the miscommunication.

18 MR. BAENA: It was actually -- I understand how
19 somebody might have interpreted it otherwise. I understood
20 from the transcript not having been burdened with being here,
21 that you wanted --

22 THE COURT: Are you going on vacation any time
23 soon.

24 MR. BAENA: I'm not going to Destin, Judge, I'll
25 tell you, and don't take their offer to go to Destin because

1 that's referred to as the red-neck Riviera in Florida.

2 THE COURT: If you'd seen the town I grew up in,
3 Mr. Baena, you might think I'd be right at home.

4 MR. BAENA: You wouldn't like that place.

5 MS. BAER: If I might suggest, Your Honor, if you
6 could give the debtors until next Monday, which is the 24th
7 to file our budget, I think we could still stay on the
8 schedule of filing our response to their budget and their
9 special counsel retention and perhaps they could file their
10 response to our budget by the July 1st deadline, or if need
11 be, we can push that a little bit.

12 THE COURT: Yeah, the dates from my point of view
13 aren't hard and fast as long as you folks agree to a
14 difference. My concern -- I like to set dates because then
15 if you disagree, it's easy for me. I have an order that says
16 do it by that date, so do it. If you can agree to a change,
17 just so you have all the pieces before me by the time I need
18 to consider them, it's all right with me.

19 MS. BAER: Your Honor, I know that Mr. Baena wants
20 to meet and confer. I don't know Mr. Bernick's schedule. We
21 haven't seen him for several weeks. It's been very, very
22 difficult. So in that respect I think -- I don't think it's
23 likely that we will get all this done and meet by June 30th.

24 MR. BAENA: Judge, I'm trying to comply with your
25 wishes.

1 THE COURT: Okay.

2 MR. BAENA: I don't hold great hopes coming to a
3 conclusion at a meeting with Mr. Bernick over budgets, but I
4 think it's worth the exercise to hear before they file papers
5 with the Court, if we can come to some agreement somewhere,
6 it's worth it. We're willing to do it.

7 THE COURT: Okay. So --

8 MR. BAENA: Maybe, Judge, if you can alleviate the
9 requirement that we do it in person, that might be helpful to
10 Mr. Bernick. If we could do it telephonically.

11 THE COURT: Well, if I let you do it telephonically
12 are you going to accomplish anything?

13 MR. BAENA: I don't think it will be any worse than
14 if we meet in person, having been to a couple of these
15 meetings already.

16 MS. BAER: But they're very civil.

17 MR. BAENA: They're wonderful. They're wonderful
18 but they're very expensive to go to, Judge.

19 THE COURT: It doesn't have to be in person. I
20 just want you to meet and confer. What I thought -- That's
21 another thing, Mr. Baena, I did use those words "in person",
22 but my view of in person was I wanted the principal people to
23 be speaking. I didn't want this filtered down to a fourth
24 level junior associate who wasn't going to be able to make a
25 decision and then never get a decision. So, I want you to

1 talk to Mr. Bernick and corporate counsel if that's
2 appropriate. Anybody else who has a budget, who is
3 submitting a budget, I want those people to be involved in
4 the discussion.

5 MR. BAENA: That will be fine, and we can probably
6 arrange something.

7 MS. BAER: I'm sure we can.

8 THE COURT: All right. With all of that, should I
9 sign this order that --

10 MS. BAER: This order isn't quite right any more.
11 It does not -- We need to provide some time, obviously, for
12 us to file our budget now that we understand what Your Honor
13 wants, and then they need time to respond to that.

14 THE COURT: Well, can I just build those in here?

15 MS. BAER: Absolutely.

16 THE COURT: Mr. Zaleski?

17 MR. ZALESKI: Matt Zaleski, Kimble & Veen
18 (phonetical) on behalf of the Asbestos Committee. Your
19 Honor, just so it's clear to the extent that we would be
20 monitoring or participating in a limited capacity in this,
21 you'd like a budget submitted by the professionals for our
22 committee, same time line as the debtors? I think it might
23 be easier if we saw theirs first. It's really going to be
24 reactive fees.

25 THE COURT: If you're sending one person to monitor

1 a trial, I'm not sure I care. If you're going to participate
2 in depositions and discovery so that there is going to be a
3 significant cost to the estate, then I do -- I want budgets.
4 So, yes, I put you on the same time frame as the debtor.

5 MR. ZALESKI: Okay. At this point, the committee
6 has not really authorized or instructed us in any way as to
7 that so we will do that and then submit an appropriate budget
8 accordingly.

9 THE COURT: All right.

10 MR. ZALESKI: Thank you.

11 MR. BAENA: Well, Judge, that raises an issue. I
12 mean, are they or are they not a party to this trial? I
13 mean, are they going to offer evidence? Should discovery or
14 new discovery be taken of their experts? I think we need to
15 know what PI's role in this is.

16 THE COURT: Well, that -- I agree. I think you do.
17 So far I haven't understood that they were taking an active
18 role, but if they are, I think this budget ought to clarify
19 that role.

20 MR. ZALESKI: I think in classic bankruptcy it is
21 sort of dis-serving, but I think we can get to a point where
22 we'll be more clear shortly.

23 MR. BAENA: Well, if that's the classic thing to do
24 in bankruptcy, I'll reserve too, Judge. I'm forced to object
25 to their participation.

1 THE COURT: I think you already did object to my
2 assigning this task to your committee, Mr. Baena, but
3 nonetheless this has to be done. I don't see that the other
4 two committees have a particularly active role that has to be
5 played in this issue. And it's really a question of
6 liability on a property damage side. That's why there's a
7 Property Damage Committee set up.

8 MR. BAENA: Right. We're not sizing that
9 liability.

10 THE COURT: No. No, no. We're just determining
11 whether there's liability.

12 MR. BAENA: Right.

13 THE COURT: Okay. So where in here shall I put the
14 modifications you've been talking about?

15 MS. BAER: Your Honor, if you look at the order,
16 paragraphs (1) through (5) are all things that have in fact
17 occurred.

18 THE COURT: All right.

19 MS. BAER: We don't need to look at those at all.
20 Paragraph (6) talks about the debtors and the PD submitting
21 the budgets, but as you can see it's for the counsel
22 representing claimants. So I think we need to add in there a
23 time frame for the debtor to submit a budget for its own
24 fees.

25 THE COURT: All right. Debtor and any committee

1 that anticipates active participation, i.e., anything more
2 than monitoring this litigation shall submit a litigation
3 budget by Monday?

4 MS. BAER: That's fine, Your Honor.

5 THE COURT: June 24. All right. The budgets are
6 to breakdown the anticipated fees and costs. Okay, what
7 else?

8 MS. BAER: Your Honor, paragraph (7) provides that
9 the parties shall have through and including July 1 to file
10 and serve responses to the other's proposed budget. I guess
11 the question is is that enough time.

12 THE COURT: Probably not if you have to meet.

13 MS. BAER: Right. We still have to make that July
14 22nd hearing date, so --

15 THE COURT: Can I just push that back to July 8th?
16 That gives you an extra week.

17 MR. BAENA: Sure.

18 THE COURT: And with respect to the retention
19 application then I think should that also be pushed back to
20 July 8th? Is that going to be driven by the budget or by
21 different factors?

22 MS. BAER: With respect to the retention
23 application, we do have the budget for the Property Damage
24 Committee's special counsel. They actually propose to retain
25 five different law firms to participate, and I understand

1 that the budget is for all the law firms.

2 MR. BAENA: That is correct.

3 MS. BAER: We do have the information we need, I
4 guess to respond.

5 THE COURT: Okay. So that can be filed by July 1?

6 MS. BAER: Yes.

7 THE COURT: What I don't think I have in here is
8 when responses to your objections are due.

9 MS. BAER: Yes, you do, Your Honor, that --

10 THE COURT: I do.

11 MS. BAER: -- if you back up is taken up in the
12 first part.

13 THE COURT: Okay.

14 MS. BAER: The responses are due on July 10th,
15 that's paragraph (4).

16 THE COURT: Oh, all right. That's fine.

17 MS. BAER: And then paragraph (9) the meet and
18 confer that needs to be revised.

19 THE COURT: Okay. By when?

20 MS. BAER: Well, if we get the -- If our responses
21 on the budgets are due on July 8th, it would make sense to
22 confer before that. With the holiday, it's going to be a
23 little tough.

24 THE COURT: Well, let me see. The reason I wanted
25 something about responses to the budget by July 8th is I'm

1 hoping that you'll use that time to come to some agreement
2 after July 8th when you respond to each other's --

3 MS. BAER: Right.

4 THE COURT: -- budgets, and in order to get them
5 filed with me by the 15th, which I really need, I think, in
6 order to be able to have time to consider them, I think you
7 need a little bit of time in there.

8 MS. BAER: I think we need time between July 8th
9 and the hearing to confer. So, perhaps put in something like
10 --

11 THE COURT: If I give you till July 5th, can you
12 still get them filed, responses filed by -- I can say as late
13 as July 10 but that only gives you three days to revise your
14 budget.

15 MR. BAENA: I'm going on vacation from the 4th to
16 the 10th, I think it is.

17 THE COURT: Okay.

18 MR. BAENA: So, I'll get it done by the 5th.

19 THE COURT: All right. Then why don't I just say
20 to meet and confer -- meet or confer by July 5th.

21 MS. BAER: That's fine, Your Honor.

22 THE COURT: But keep the budget dates by --

23 MS. BAER: July 8th.

24 THE COURT: Okay. All right. Anything else?

25 All right. What I don't have from the debtor yet are: the

1 objections to claims. I don't have the committee's request
2 for counsel. I suppose that's because it will come up in my
3 July hearing binder, but I think I'd like to see them sooner.
4 Any possibility that I can get you to send them?

5 MS. BAER: Your Honor, I have the objections to
6 claims with me now and can present that to you. I do not
7 have an unmarked copy of their retention application.

8 UNIDENTIFIED SPEAKER: I have a copy of it.

9 THE COURT: Okay. What about the amended proofs of
10 claim. I haven't seen those either.

11 MS. BAER: I don't have them with me.

12 MR. BAENA: I don't have them, Judge, either with
13 me. We didn't file them. They were filed by --

14 MR. TACCONELLI: Your Honor, Theodore Tacconelli,
15 local for the PD Committee. Your Honor, they were docketed.
16 They can be pulled off of the docket, the amended proofs of
17 claims.

18 THE COURT: They were docketed at the main case
19 instead of with the proof of claim docket?

20 MR. TACCONELLI: Yes.

21 THE COURT: Okay. Mona, can you get the amended
22 proofs of claims. If you have any problems, call Mr. Baena
23 or counsel to the debtor, one or the other, so that we can
24 get the amended proofs of claims.

25 MR. BAENA: And if I can approach the bench, I'll

1 give you a copy.

2 THE COURT: All right. Thank you. All right. I
3 just want these for my ability to read them in advance. I'll
4 expect to get them in the hearing binders any way.

5 MS. BAER: And, Your Honor, I have the debtors'
6 objections.

7 THE COURT: Okay. These to the amended claims now?

8 MS. BAER: Yes.

9 THE COURT: All right.

10 MS. BAER: Your Honor, if you might recall, I think
11 we filed ten claims. There were four amended claims, this
12 response to the four amended claims as well as the other
13 claims.

14 THE COURT: All right. Okay. Any other changes to
15 this order then? All right. I am signing it now.

16 MS. BAER: Thank you, Your Honor.

17 THE COURT: So hopefully it will get docketed.
18 Okay. Anything else that we need to discuss.

19 MR. TACCONELLI: Your Honor, I'm sorry. Is there
20 any way you can just review the dates.

21 THE COURT: Sure.

22 MR. TACCONELLI: So we're all straight on that.

23 THE COURT: All right. Just one second. Okay.
24 These are the dates that have expired already: By May 30,
25 amended claims were to be filed; by June 10, objections to

1 the claims were to be filed; by July 10, any response to
2 those objections to claims is due. This one's also past: By
3 June 7, the Property Damage Committee was to file its
4 application to retain special counsel. Also by June 7, the
5 debtors and the Property Damage Committee were to serve their
6 budgets. The Property Damage Committee I understand is
7 docketed -- Mona, would you get that too. We haven't seen
8 that budget yet either.

9 MR. BAENA: It's in the paper I gave you.

10 THE COURT: It's in the paper? Okay. Thank you.
11 And now I've modified that paragraph to say that by June
12 24th, the debtor and any committee that anticipates active
13 participation is to submit a litigation budget. The parties
14 have through and including July the 8th to file responses to
15 the other budget. The debtor had till June the 7th -- No,
16 I'm sorry. The debtor had until July the 1st to object to
17 the retention application for special counsel for the
18 Property Damage Committee. The parties are to meet or confer
19 by July the 5th to discuss their budgets. And the pretrial
20 conference is going to be held on July 22nd at ten. Okay?

21 MR. TACCONELLI: Thank you, Your Honor

22 MR. BAENA: Judge, I believe, if I may, I believe
23 that the scope of the meeting was not to just discuss the
24 budget but to discuss the scope of the trial.

25 THE COURT: Yes, it was for both. Do you want me

1 to add that to this order?

2 MS. BAER: It's in there, Your Honor. Actually if
3 you read the last part if it, it indicates to discuss
4 proposed budgets and other litigation issues in connection
5 with the anticipated science trial.

6 THE COURT: It does say that. I just skipped that
7 part.

8 MR. BAENA: As long we understand it's the scope of
9 the trial.

10 THE COURT: Yes. It's the budgets and the scope of
11 the trial. Okay. Now, was the discovery order -- I'm sorry,
12 but I've lost track of this totally. Was the discover order
13 on the trial itself actually set, the pretrial process for
14 the science trial, or were we waiting till July 22 to do
15 that?

16 MS. BAER: Your Honor, you determined to wait till
17 July 22.

18 THE COURT: Okay. Fine. Then, hopefully, you'll
19 give me a proposal that you might agree on.

20 MS. BAER: We'll certainly give you a proposal.
21 We'll try.

22 THE COURT: All right. You folks, I mean, you get
23 along fine in court. What do I have to do with you out of
24 court to get you to start talking to each other and --

25 MS. BAER: We get along fine. We just have a

1 difference of opinion.

2 THE COURT: Okay. Anything else on this issue, Mr.
3 Zaleski?

4 MR. ZALESKI: Again, Matt Zaleski, on behalf of the
5 PI Committee. Briefly, Your Honor, the objection that I had
6 originally in the PD special counsel application was July
7 8th. You're now modifying that for all parties; correct? To
8 July 1, which is what you just read but you said the debtors,
9 and I'd like to be clear.

10 THE COURT: For which? I'm sorry.

11 MR. ZALESKI: To the special counsel application of
12 the PD Committee.

13 THE COURT: Well, it only says the debtor in here.

14 MR. ZALESKI: Okay. Well, they served it on
15 parties and --

16 THE COURT: It should be debtors and any other
17 party, yes.

18 MR. ZALESKI: And we would be now July 1 for that
19 deadline.

20 THE COURT: That's correct. Is that long enough?

21 MR. ZALESKI: It will be if that's what it is.

22 THE COURT: Okay.

23 MR. ZALESKI: Thanks.

24 THE COURT: All right. I've modified it to say
25 debtor any other party in interest. Okay? Anything else on

1 this order? Okay. It's entered. Anything else in the case?
2 All right. We're adjourned. Thank you.

3 ALL: Thank you, Your Honor.

4 (Hearing concluded for this date.)
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12

13 I, Elaine M. Ryan, approved transcriber for the
14 United States Courts, certify that the foregoing is a correct
15 transcript from the electronic sound recording of the
16 proceedings in the above-entitled matter.
17

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